



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 210629-0138]

RIN 0648-BG66

### International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Requirements to Safeguard Fishery Observers

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), NMFS issues this final rule establishing requirements to safeguard fishery observers and establishing pre-trip notification procedures for observer placement. This action is necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

**DATES:** This rule is effective on *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR), as well as the proposed rule (85 FR 66513; October 20, 2020), are available via the Federal e-rulemaking Portal, at [www.regulations.gov](https://www.regulations.gov) (search for Docket ID NOAA-NMFS-2020-0125). Those documents are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI

96818.

A final regulatory flexibility analysis (FRFA) prepared under authority of the Regulatory Flexibility Act is included in the **Classification** section of the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to PIRO at the address listed above, by email to *OIRA\_Submission@omb.eop.gov*, or by fax to (202) 395-5806.

**FOR FURTHER INFORMATION CONTACT:** Valerie Post, NMFS PIRO, 808-725-5034.

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 20, 2020, NMFS published a proposed rule in the **Federal Register** (85 FR 66513) proposing to establish requirements to safeguard fishery observers and to establish pre-trip notification procedures for observer placement. The 30-day public comment period for the proposed rule closed on November 19, 2020.

The final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC

Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: [www.wcpfc.int/doc/convention-area-map](http://www.wcpfc.int/doc/convention-area-map).

This final rule implements specific provisions of Conservation and Management Measure (CMM) 2017-03, “Conservation and Management Measure for WCPFC Regional Programme Observers,” as well as establishes pre-trip notification procedures for observer placement. The preamble to the proposed rule provides background information, including information on the Convention and the Commission, the provisions that are being implemented in this rule, and the basis for the regulations, which is not repeated here.

## **The Action**

The specific elements of the final rule are detailed below.

### *1. Observer Safety Requirements*

This final rule implements specific requirements for vessel owners and operators to help ensure the safety of WCPFC observers.<sup>1</sup> CMM 2017-03 describes requirements for vessel owners and operators specifically related to vessel operations, notification, search and rescue procedures, and investigations in the event of death, injury, serious illness, missing overboard, or harassment of a WCPFC observer.

NMFS is not promulgating additional regulations in the event of death, loss or

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<sup>1</sup> A WCPFC observer is a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission’s Regional Observer Programme (ROP), including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission's ROP (see 50 CFR 300.211).

serious injury as they would be duplicative of U.S. Coast Guard regulations on marine casualties and investigations at 46 CFR part 4.

Under the final rule, vessel owners and operators are required to notify the designated authorities as specified by the Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels> in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer. NMFS has created a website that provides specific contact information of the designated authorities, including emails and phone numbers. At this time, NMFS has identified the observer provider and NOAA Office of Law Enforcement Pacific Islands Division Duty Officer as contacts in the event of serious assault, intimidation, threats, interference or harassment of a WCPFC observer, and the NOAA Office of Law Enforcement in the event of serious illness. Any changes or updates to these contacts will be posted on the website. Owners and operators are required to immediately notify the contacts of the situation and the status and location of the observer.

NMFS does not maintain a 24-hour hotline to handle search and rescue or urgent law enforcement response. Thus, in emergency situations that need an immediate response, vessel owners and operators are encouraged to contact the nearest U.S. Coast Guard Rescue Coordination Center (RCC) that can help coordinate with the closest Search and Rescue (SAR) facility in the area of the vessel:

<https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Response-Policy-CG-5R/Office-of-Incident-Management-Preparedness-CG-5RI/US-Coast-Guard-Office-of-Search-and-Rescue-CG-SAR/RCC-Numbers/>.

In addition, under the final rule, the vessel owner or operator would be required to follow certain procedures in the event of serious illness, assault, intimidation, threats, interference or harassment of a WCPFC observer. The rule would require that, in these

cases, the owner or operator of the fishing vessel must: (1) immediately cease fishing operations; (2) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel; (3) where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (4) cooperate fully in any official investigations into the cause of the illness or incident.

As stated above, the final rule specifies that the owner or operator of the fishing vessel must “immediately cease fishing operations” in the event of serious illness, assault, intimidation, threats, interference or harassment of a WCPFC observer. NMFS anticipates that there may be circumstances where “immediately cease” could allow for gear to be retrieved and NMFS does not encourage abandoning fishing gear. Although the owner or operator of a vessel is required to immediately cease fishing operations, this rule would not prohibit reasonable steps to recover gear and catch, if appropriate under the circumstances.

## *2. Pre-Trip Notification Procedures for Vessels Requiring a WCPFC Observer*

To facilitate the placement of WCPFC observers on U.S. purse seine vessels when departing from American Samoa, this final rule requires U.S. purse seine vessel owners and operators to submit notifications to NMFS at least five business days before expected departure. The notification must include the name of the vessel, name of the operator of the vessel, telephone number or email at which the owner or operator may be contacted, and intended departure date.

As stated in the preamble to the proposed rule, after reviewing the current administrative process for observer placements, NMFS believes such notifications are needed to facilitate observer placement for trips departing from American Samoa.

NMFS notes that a variety of factors may influence a vessel’s departure date,

including the availability of an observer. Pursuant to the South Pacific Tuna Treaty (SPTT) and through a separate contractual agreement between the American Tunaboat Association (ATA) and the Pacific Islands Forum Fisheries Agency (FFA), U.S. purse seine vessels carry observers deployed by the FFA Observer Program. FFA observers are authorized WCPFC observers and are nationals of Pacific Island countries. Currently, NMFS coordinates with FFA and places WCPFC observers on U.S. purse seine vessels departing from American Samoa. As such, NMFS cannot guarantee that an observer will be placed within five business days of a request. Similarly, an observer may be placed earlier than five business days from intended departure (*e.g.*, an observer on board the vessel decides to continue on board for another trip), in which case the vessel may leave port earlier than the intended departure date specified in the notification. NMFS is clarifying in this final rule that the departure date submitted in the notification is the vessel owner or operator's intended departure date and not necessarily the date the vessel actually leaves port.

In the proposed rule, NMFS also proposed a pre-trip notification requirement of five business days prior to expected departure for vessels requesting a cross-endorsed observer.<sup>2</sup> This requirement would have applied to vessels of any gear type requesting a cross-endorsed observer though to-date only U.S. purse seine vessels have used cross-endorsed observers. NMFS has reviewed its existing processes for cross-endorsed observer requests, including a pre-trip notification requirement of at least five days prior to vessel departure at 50 CFR 216.24(b)(8)(iv)(A) for requests for cross-endorsed observers in the eastern Pacific Ocean (EPO), which became effective on September 18, 2020 (85 FR 58297; September 18, 2020). As the requirements for the EPO for requesting a cross-endorsed observer also apply to those purse seine vessels in the WCPO

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<sup>2</sup> A cross-endorsed observer is an observer that is "cross-endorsed" pursuant to a Memorandum of Cooperation between the Commission and the Inter-American Tropical Tuna Commission (IATTC) that specifies a process to allow the observer to meet the observer requirements of both organizations.

requesting a cross-endorsed observer, NMFS has decided not to implement the cross-endorsed observer notification requirements specified in the proposed rule.

### **Public Comments and Responses**

NMFS received two comment letters on the proposed rule. Below, NMFS summarizes the matters raised in each of the individual comment letters, grouping similar comments together, and provides a response to each of these matters.

Comment 1: One commenter provided a general statement of support for the proposed rule so that observers would be protected when carrying out their duties. Another commenter provided a statement of support for NMFS to implement CMM 2017-03 and to protect observer health and safety.

Response: NMFS acknowledges the comments.

Comment 2: One commenter noted that CMM 2017-03 and the proposed regulatory language outline requirements for vessel owners or operators to follow in the event that an observer is seriously ill and requirements for vessel owners and operators to follow in the event of assault, intimidation, threats or harassment, but that the proposed rule's preamble erroneously characterized the requirements as being the same for the two types of events. The commenter requested that the final rule correct this misstatement and clarify that the regulatory language of the proposed rule and the provisions of CMM 2017-03 are what NMFS is promulgating.

Response: NMFS agrees that CMM 2017-03 describes specific requirements in the event that an observer is seriously ill and specific requirements in the event that an observer has been assaulted, intimidated, threatened or harassed. Although NMFS described the processes as similar in the proposed rule's preamble, the proposed regulatory text clearly differentiated between the events, in accordance with the language in CMM 2017-03. NMFS clarifies here that in the event of serious illness, the owner and operator of the fishing vessel must: (1) immediately cease fishing operations, (2) take all

reasonable action to care for the observer and provide any medical treatment available and possible aboard the vessel; (3) where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable, and (4) cooperate fully in any official investigation as to the cause of the illness. Additionally, in the event that an observer has been assaulted, intimidated, threatened or harassed, the owner and operator of the fishing vessel must: (1) immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board; (2) if the observer or the observer provider indicate that they wish to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. Government contact, that facilitates access to any needed medical treatment; and (3) cooperate fully in any official investigations into the incident.

Comment 3: One commenter requested that NMFS clarify that the observer safety protocols applicable to where an observer has been assaulted, intimidated, threatened, or harassed are triggered only where the vessel owner or operator either: (1) has firsthand knowledge that the observer was assaulted, intimidated, threatened, or harassed (*i.e.*, saw or overhead the problem); or (2) where the vessel owner or operator has been presented with objective evidence from the observer or others clearly showing that the observer has been assaulted, intimidated, threatened, or harassed. The commenter stated that a response to mere allegations of harassment could result in costly ramifications if they are unjustified. The commenter noted that the proposed rule calculated the potential foregone opportunity for purse seine vessels as high as the revenue from a trip at \$1.4 million dollars, and asserted that the costs were disproportionate compared to other fisheries being regulated under the same rule. The commenter stated that these clarifications are necessary to ensure that vessel owners and operators are afforded appropriate due process



protections and that compliance costs and penalties are fairly applied. The commenter stated that without amendment or clarification by NMFS, the proposed rule could subject vessel owners or operators to penalties for not immediately knowing that one of the conditions triggering a set of duties has occurred. Although the commenter stated that NMFS would likely not impose penalties for not taking quick enough action where delay primarily was attributable to neither the vessel owner nor operator knowing about the observer's illness or other issues, the commenter requested that NMFS clarify that the respective duties to act are triggered when either the vessel owner or operator knows of the observer's condition triggering the duties.

Response: CMM 2017-03 does not qualify that these protocols are only triggered if vessel owners and operators have firsthand knowledge or have an evidentiary standard. Moreover, as discussed in the RIR, NMFS projects that these incidents will occur infrequently. Thus, NMFS does not believe it appropriate to limit the protocols accordingly.

Under the regulations at 50 CFR 300.43(a)(3), purse seine vessels operating under the SPTT, which includes most purse seine vessels fishing within the Convention Area, are required to disembark observers at the point and time notified by the FFA to the U.S. Government. This requirement is already in place and is not limited to observer safety-related events. NMFS also notes that similar observer safety protocol requirements to this rule are also already in place for vessels operating in the EPO under regulations at 50 CFR 300.29 so vessels operating in the EPO are already subject to them.

The intent of this rulemaking is protect observer safety and not necessarily to pre-judge the outcome of any investigation. NMFS disagrees with the statement that the proposed text does not afford due process protections. The rule will encourage owners and operators of U.S. purse seine vessels to take affirmative steps to train their crews and

to prevent acts of harassment against observers. Under CMM 2017-03, the United States has the responsibility under the CMM to investigate any alleged incidents.

Moreover, NMFS believes the rule would not have disproportionate effects on purse seine vessels, but rather would affect all vessels equally in proportion to their individual trip costs.

Comment 4: One commenter stated that they opposed the proposed change to require purse seine vessels to provide pre-trip notifications and requests for observers because the scope of the requirement is not clear. The commenter stated that the preamble described reasons for the need for pre-trip notification for trips departing from American Samoa, but did not feel that the preamble identified specific shortcomings or deficiencies to the current process that justified the new requirement. The commenter noted that purse seine vessels cannot depart unless an observer is onboard, and did not feel there was sufficient explanation as to why the pre-trip notification requirement applies to when requesting a cross-endorsed observer and when departing from ports other than American Samoa. The commenter stated that they believed that the pre-trip notification requirement of five business days prior to trip departure would restrict operational flexibility and would result in larger costs to purse seine vessels than what are described in the proposed rule. The commenter requested that the pre-trip notification period be shortened to 48 hours if NMFS believes there is a real need for the requirement. Finally, the commenter requested confirmation that the pre-trip notification requirement does not apply to owners and operators of purse seine vessels picking up observers at ports other than American Samoa if they are not seeking a cross-endorsed observer.

Response: NMFS confirms that the pre-trip notification requirements apply to purse seine vessels requesting a WCPFC observer and departing from American Samoa and the requirements do not apply to vessels picking up observers at ports other than American Samoa. As discussed above, NMFS has also re-evaluated the need for pre-trip

notification for vessels requesting placement of a cross-endorsed observer regardless of port of departure, and decided not to implement this requirement in this final rule because a similar requirement for cross-endorsed observer requests has already been implemented at 50 CFR 216.24(a)(8)(iv).

NMFS continues to believe that the notification prior to a trip is necessary for purse seine trips departing from American Samoa and requesting a WCPFC observer. NMFS facilitates entry into American Samoa for WCPFC observers being placed on purse seine vessels. If adequate pre-trip notification is not given, entry into American Samoa may be delayed and this could delay placement of the observer and therefore vessel departure. As the placement of WCPFC observers on purse seine vessels is provided currently by FFA, vessel owners and operators have an incentive to ensure that adequate notice is given to ensure that observers can travel to the port of departure. Given that these observers are nationals from other countries, NMFS assists with obtaining the necessary entry permits into American Samoa. NMFS commits significant resources facilitating the deployment of these observers in Pago Pago. The requirements in this final rule formalize an informal process that is already in place.

As stated above, this rule does not guarantee that a WCPFC observer will be placed on board a purse seine vessel within five business days of a notification being submitted. Similarly, as the commenter noted there may be circumstances in which a WCPFC observer is already in American Samoa and fewer than five days may be needed for an observer to be placed on a purse seine vessel in those circumstances. NMFS acknowledges that there may be times where observer placement could occur more quickly. In this final rule NMFS has changed the regulatory text so that the date that must be provided in the notification is the intended date and not necessarily the date the vessel leaves port.

NMFS does not believe that the pre-trip notification requirement would restrict operational flexibility for purse seine vessels.

### **Changes From the Proposed Rule**

This final rule includes four changes to the regulatory text from the proposed rule. NMFS has removed the regulatory text requiring pre-trip notification requests for cross-endorsed observers, as well as the definition of *WCPFC-IATTC cross-endorsed observer* associated with that requirement. NMFS has also changed the timing of the pre-trip notification requirement at 50 CFR 300.215(d)(2) for purse seine vessels departing from American Samoa such that the notification must be submitted at least five business days before the vessel owner's or operator's intended departure date rather than the actual departure date. NMFS has made editorial changes to correctly spell the WCPFC Regional Observer Programme in 50 CFR 300.215(f). NMFS also added paragraph (aaa) in 50 CFR 300.222 prohibiting the failure to provide pre-trip notification.

### **Classification**

The Administrator, Pacific Islands Region, NMFS, has determined that this final rule is consistent with the WCPFC Implementation Act and other applicable laws.

#### *Coastal Zone Management Act (CZMA)*

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), Guam, and the State of Hawaii. NMFS submitted determinations to Hawaii and each of the Territories on March 16, 2020, for review by the responsible state and territorial agencies under section 307 of the CZMA. Hawaii replied by letter dated March 19, 2020, stating that, because the proposed rule is outside of the jurisdiction of the Hawaii Coastal Zone Management Program's enforceable policies, it would not be responding to the consistency determination. The CNMI replied by letter dated May 12, 2020, stating that

based on the information provided, it has determined that the action will be undertaken in a manner that is consistent to the maximum extent practicable with the enforceable policies of the CNMI's coastal management program. Guam replied by letter dated May 27, 2020, stating that based on the information provided, it has determined that the action will be consistent with the enforceable policies of Guam's Coastal Management Program. No response was received from American Samoa, and thus, concurrence with the respective consistency determinations is presumed (15 CFR 930.41).

#### *Executive Order 12866*

This final rule has been determined to be not significant for purposes of Executive Order 12866.

#### *Regulatory Flexibility Act (RFA)*

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604 of the RFA. The FRFA incorporates the initial regulatory flexibility analysis (IRFA) prepared for the proposed rule. The analysis in the IRFA is not repeated here in its entirety. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section and this **SUPPLEMENTARY INFORMATION** section of the preamble of this final rule. The FRFA analysis follows:

Significant Issues Raised by Public Comments in Response to the IRFA

See comment three and response by NMFS above for matters raised regarding the IRFA, which pertains to potential disproportionate burden for purse seine vessels.

#### *Description of Small Entities To Which the Rule Will Apply*

For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 114111) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual

receipts not in excess of \$11 million for all its affiliated operations worldwide.

This final rule would apply to owners and operators of U.S. commercial fishing vessels that fish for highly migratory species (HMS) in the Convention Area that: (1) carry a WCPFC Observer or (2) purse seine for HMS in the Convention Area. This includes vessels in the purse seine, longline, and albacore troll fleets. The estimated number of affected fishing vessels is as follows based on the number of vessels on the WCPFC Record of Fishing Vessels as of March 2, 2021: 20 purse seine vessels, 154 longline vessels, and 27 albacore troll vessels. Thus, the total estimated number of commercial fishing vessels that would be subject to the rule is 201. The purse seine vessels operating in the Convention Area generally land in American Samoa and other ports in Pacific Islands, the longline vessels operating in the Convention Area generally land in American Samoa and Hawaii, and the albacore troll vessels operating in the Convention Area generally land their catch in California, Oregon, Washington, or Canada.

Based on (limited) financial information about the affected fishing fleets, and using individual vessels as proxies for individual businesses, NMFS believes that all the affected fish harvesting businesses in all the fleets, except the purse seine fleet, are small entities as defined by the RFA; that is, they are independently owned and operated and not dominant in their fields of operation, and have annual receipts of no more than \$11.0 million. Within the purse seine fleet, analysis of average revenue, by vessel, for 2017-2019 reveals that average fleet revenue was \$8,212,000 (NMFS unpublished data combined with price data from <https://www.ffa.int/node/425> and <https://www.wcpfc.int/node/46580> accessed on July 27, 2020); however, 14 participating vessels qualified as small entities with their average of the most recent three years of vessel revenue for which data is available of less than \$11 million. Within the Hawaii based longline fleet, an average of 146 vessels recorded landings during 2017-2019 with

a average vessel revenue of approximately \$828,000 per vessel (estimate calculated using data from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery Evaluation Report and Annual Reports of the Hawaii Longline Fishery). For the American Samoa based longline fleet, an average of 15 vessels recorded landings during 2017-2019 with average vessel revenue of approximately \$339,000 per vessel (estimate calculated using data from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery Evaluation Report and Annual Reports of the American Samoa Longline Fishery). None of the other potentially directly regulated fishing sectors had total fishery revenue of all vessels combined that exceeded the small entity threshold.

#### Recordkeeping, Reporting, and Other Compliance Requirements

The reporting, recordkeeping and other compliance requirements of this final rule are described earlier in the preamble. The classes of small entities subject to the requirements and the expected costs of complying with the requirements are described above in the **Classification** section of this final rule.

As described in the Paperwork Reduction Act (PRA) subsection below, this final rule contains a revised collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the PRA.

Fulfillment of the requirements under the final rule is not expected to require any professional skills that affected vessel owners and operators do not already possess.

(1) *Reporting requirements when carrying a WCPFC observer*: This requirement is part of a proposed collection of information subject to approval by OMB under the PRA. It would apply to about 195 small business entities, (derived from subtracting the six vessels that do not qualify as small business entities from 201, the number of fishing vessels affected by this rule as estimated from vessels with WCPFC area endorsements). Complying would require that owners and operators of purse seine, longline and troll vessels to contact NMFS in the event of serious illness, assault, intimidation, threats,

interference, or harassment of a WCPFC observer. NMFS estimates the cost of compliance as the cost of a five minute phone call though the cost of compliance could vary depending on the directions given by NMFS. NMFS cannot project how many calls would occur, but from 2015-2019, NOAA Office of Law Enforcement charged a total of six cases of harassment against purse seine and longline vessels in the Pacific Islands Region. Thus, NMFS expects events of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer to occur very rarely (average of one per year) and thus the cost of reporting to be very small. The Commission has indefinitely deferred implementation of placing WCPFC observers on troll vessels, and for the foreseeable future, NMFS does not believe that this requirement would add any new compliance costs for troll vessels. If the Commission were to change its position on placing WCPFC observers on troll vessels, troll operators may incur compliance costs similar to those described above. Fulfillment of this requirement is not expected to require any professional skills that the vessel owners and operators do not already possess.

(2) *Requirement to ensure observer safety*: This requirement is outside of the proposed collection of information under the PRA. In the event of serious illness, assault, intimidation, threats, interference or harassment of a WCPFC observer, the proposed rule would require the owner or operator of the fishing vessel to: (1) immediately cease fishing operations; (2) take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel; (3) where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and (4) cooperate fully in any official investigations into the cause of the illness. NMFS cannot project how often this would occur, but anticipates these events to occur rarely. As mentioned above, NOAA Office of



Law Enforcement has charged six cases of harassment against purse seine and longline vessels over 2015-2019 in the Pacific Islands Region, which equates to approximately one per year. If such an event does occur, the impacts could vary depending on when the event occurs and what foregone opportunity is lost. For illustrative purposes, the average gross revenue of a U.S. purse seine fishing trip from 2017-2019 was a little under \$1.4 million per trip (calculated by multiplying Bangkok fish prices by average catch per trip using NMFS data) so if an event occurred near the start of a fishing trip, the vessel could potentially forgo much of that revenue along with any trip costs already incurred. For U.S. longline vessels the average gross revenue from 2017-2019 (calculated using nominal revenue and trip information from the 2019 Pelagic Fishery Ecosystem Plan Stock Assessment and Fishery Evaluation Report) was around \$664,000 per Hawaii-based deep-set trip, \$64,000 per Hawaii-based shallow-set trip, and \$39,000 per American Samoa-based trip so if an event occurred near the start of a fishing trip, the vessel could potentially forgo much of that revenue along with any trip costs already incurred.

(3) *Notification requesting a WCPFC Observer*: This requirement is part of a proposed collection of information subject to approval by OMB under the PRA. It would apply to about 199 small business entities. Vessels are already required to provide notification prior to trip departure if they intend to transship at sea, and this proposed requirement would expand notification requirements to purse seine vessels requesting a WCPFC observer and departing from American Samoa.

The proposed requirement may result in compliance costs for purse seine vessels requesting a WCPFC observer when departing from American Samoa. It is estimated that each notification would require 1 minute of labor and about \$1 in communication costs. The value of the required labor is estimated to be \$24.42 per hour. The estimated cost of compliance is less than \$2 per notification. The number of requests and notifications

cannot be predicted with any certainty, but for the purpose of this analysis, each purse seine vessel is expected to make 3.57 requests or notifications per year related to WCPFC observers (estimate based on the average number of trips per year from 2016-2020 divided by 20, the number of expected potential respondents). The estimated cost of compliance is therefore expected to be \$4.96 for a vessel that makes 3.57 pre-trip notifications per year.

#### Duplicating, Overlapping, and Conflicting Federal Regulations

NMFS has not identified any Federal regulations that conflict with these regulations. NMFS has identified several Federal regulations that overlap with the final rule:

As mentioned above, the U.S. Coast Guard has regulations at 46 CFR part 4 relating to marine casualties. This final rule implements the requirements of CMM 2017-03 that are not marine casualties covered by the existing U.S. Coast Guard regulations.

IATTC adopted Resolution C 18-07 on Observer Safety, and NMFS published a final rule on May 18, 2020 (85 FR 29666) related to actions required in the event of loss of life, serious illness or injury and assault, intimidation, threats or harassment to observers on vessels that are on fishing trips in the IATTC Area. The regulations in this final rule and the regulations applicable to the IATTC Area would apply to WCPFC observers that are on vessels that are fishing in the IATTC Area, such as WCPFC observers that are also cross-endorsed observers. In this case, there would be overlapping regulations, but NMFS has ensured consistency in the protocols and in the contacts required in the event of serious illness, assault, intimidation, threats or harassment such that both requirements for notification would be satisfied with one notification.

#### Alternatives to the Final Rule

NMFS has not been able to identify any alternatives that would minimize any significant economic impact of the final rule on small entities. NMFS rejected the

alternative of taking no action at all because it would be inconsistent with the United States' obligations under the Convention. As a Contracting Party to the Convention, the United States is required to implement the decisions of the WCPFC. Consequently, NMFS has limited discretion as to how to implement those decisions.

### **Small Entity Compliance Guide**

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. NMFS has prepared a small entity compliance guide for this rule, and will send copies of the appropriate guide to holders of permits in the relevant fisheries. The guide and this final rule also will be available via the Federal e-rulemaking Portal, at [www.regulations.gov](http://www.regulations.gov) (search for ID NOAA-NMFS-2020-0125) and by request from NMFS PIRO (see **ADDRESSES**).

### *Paperwork Reduction Act*

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the PRA. This rule changes the existing requirements for the collection of information 0648-0649, "Transshipment Requirements Under the WCPFC," and requires reporting in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer as well as pre-trip notifications for purse seine vessels requesting a purse seine observer and departing from American Samoa. Public reporting burden for reporting events of serious illness, assault, intimidation, threats, or harassment of a WCPFC observer is estimated to be 5 minutes per response, and public reporting burden for purse seine vessels requesting a purse seine observer and departing from American Samoa is estimated to average 1 minute per

response, including the time for reviewing instructions searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information.

At the proposed rule stage, NMFS had considered revising Control Number 0648-0214, “Pacific Islands Region Logbook Family of Forms” to include the observer safety collection of information requirements for longline vessels. NMFS now believes that it makes more sense to include the observer safety collection of information requirements for all gear types in Control Number 0648-0649, “Transshipment Requirements Under the WCPFC”, so the 0648-0214 collection will not be revised.

We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Written comments and recommendations for this information collection should be submitted at the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by using the search function and entering either the title of the collection or the OMB Control Number 0648-0649.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

#### **List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: June 29, 2021.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs,*

*National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species**

1. The authority citation for 50 CFR part 300, subpart O, continues to read as follows:

**Authority:** 16 U.S.C. 6901 *et seq.*

2. In § 300.215, revise paragraph (b) and add paragraph (f) to read as follows:

**§ 300.215 Observers.**

\* \* \* \* \*

(b) *Notifications.* (1) If a fishing vessel of the United States used for commercial fishing for HMS in the Convention Area intends to conduct transshipments at sea, the owner or operator of that fishing vessel is required to carry a WCPFC observer under paragraph (d) of this section during the fishing trip and shall notify the Pacific Islands Regional Administrator of the need for a WCPFC observer at least 72 hours (exclusive of weekends and Federal holidays) before the vessel leaves port on the fishing trip. The notice shall be provided to the Observer Placement Contact specified by the Pacific Islands Regional Administrator and must include the official number of the vessel, the name of the vessel, the intended departure date, time, and location, the name of the operator of the vessel, and a telephone number at which the owner, operator, or a designated agent may be contacted during the business day (8 a.m. to 5 p.m. Hawaii Standard Time). If applicable, this notice may be provided in conjunction with the notice required under § 665.803(a) of this title.

(2) In order to obtain a WCPFC observer on a fishing trip departing from American Samoa, the owner or operator of a fishing vessel of the United States equipped

with purse seine gear shall provide the Pacific Islands Regional Administrator with the following information before departure on the fishing trip, at least five days (exclusive of weekends and Federal holidays) before the owner or operator of the fishing vessel's intended departure: the name of the vessel; name of the operator of the vessel; a telephone number or email at which the owner or operator may be contacted; and the intended departure date. This information shall be provided to the address specified by the Pacific Islands Regional Administrator.

\* \* \* \* \*

(f) *Observer safety.* The following requirements apply when a WCPFC observer is on a fishing trip operating under the Commission's Regional Observer Programme.

(1) The owner or operator of a fishing vessel of the United States shall immediately report the serious illness that threatens the health or safety of a WCPFC observer to the U.S Government contact on the list provided by the Pacific Islands Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels>. In addition, the owner or operator of the fishing vessel must:

(i) Immediately cease fishing operations;

(ii) Take all reasonable actions to care for the observer and provide any medical treatment available and possible on board the vessel, and where appropriate seek external medical advice;

(iii) Where directed by the observer provider, if not already directed by the appropriate U.S. Government contact, facilitate the disembarkation and transport of the observer to a medical facility equipped to provide the required care, as soon as practicable; and

(iv) Cooperate fully in any official investigations into the cause of the illness.

(2) In the event that a WCPFC observer on a fishing vessel of the United States

has been assaulted, intimidated, threatened, or harassed, the owner or operator of the fishing vessel shall immediately notify the U.S. Government contact and observer program contact on the list provided by the Pacific Islands Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels> of the situation and the status and location of the observer. In addition, the owner or operator of the fishing vessel must:

(i) Immediately take action to preserve the safety of the observer and mitigate and resolve the situation on board;

(ii) If the observer or the observer provider indicate that they wish to be removed from the vessel, facilitate the safe disembarkation of the observer in a manner and place, as agreed by the observer provider and a U.S. Government contact, that facilitates access to any needed medical treatment; and

(iii) Cooperate fully in any official investigations into the incident.

3. In § 300.222, add paragraphs (zz) and (aaa) to read as follows:

**§ 300.222 Prohibitions.**

\* \* \* \* \*

(zz) Fail to comply with the observer safety requirements in § 300.215(f).

(aaa) Fail to provide pre-trip notification per requirements in § 300.215(b).